



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 772

APPLICANT **Q Ltd**

RESPONDENT **S Ltd**

The Tribunal orders:

S Ltd is to pay Q Ltd \$1057.44 by 29 December 2023.

Reasons:

1. RX took his company car to TT, a business owned by S Ltd, for new pipes to be fitted in the exhaust. S Ltd's employee replaced the chamber with pipes and the car was handed over to RX, after he paid \$741.19 to S Ltd.
2. RX was unhappy with the car's performance and complained to MK, in charge at TT. MK's position was that the pipework was changed as instructed and 2" pipe was used because it fitted inside the existing flange.
3. MK did not agree that TT used the wrong size pipework and refused to give RX the refund he was seeking.
4. RX had dyna testing carried out at a cost of \$632.50, and provided MK with the results. MK did not change his view.
5. RX had the job redone at a cost of \$685.
6. RX is claiming \$1317.50 comprising the dyna tune charge of \$632.50 and the amount of \$741.19 charged by S Ltd.
7. The issues to be resolved are:
 - a. Did TT provide a service that was fit for purpose?
 - b. If not, is RX entitled to payment of \$685 for the third party's repair or to a refund of \$741.19?
 - c. Is RX entitled to payment of \$632.50 for the dyna tune?

Did TT provide a service that was fit for purpose?

8. The CGA implies certain guarantees when goods and services are supplied by a supplier to a consumer in trade including that the services will be carried out with reasonable care and skill (s28 of the CGA), and the services and any product resulting from the services will be reasonably fit for any particular purpose, and of such a nature and quality that it can reasonably be expected to achieve any particular result, made known to the supplier before or at the time of the supply of the services (s29 of the CGA).
9. I find TT did not provide its service with reasonable care and skill and the service and result of the service was not fit for purpose for the following reasons:
 - i. I heard MK's argument that it was acceptable to use a 2" pipe because this fitted inside the existing flange. However, I prefer RX's argument, supported by the evidence from EW of [Centre] that the correct pipe size as a minimum was 2 ¼" as used elsewhere in the exhaust system. When asked if this size could be welded to the flange, MK agreed it could.
 - ii. MK disagreed that pressing the pipe to form a bend compressed it unacceptably. However, I can see in the photo that the compression has reduced the diameter and I accept RX's measurement supported by EW that the pipe was reduced to 1 ¾" because it was pressed to bend.
 - iii. RX said pipework with bends that are not compressed are readily available to places like TT and it was poor practice to press it and reduce the size. I accept this argument from RX when easily alternatives were available that would not reduce performance.
 - iv. MK said RX did not give any instruction on the performance he expected from the change to pipework and so TT should not be blamed for any reduction in performance. In addition, MK said reducing the size of pipes does not reduce performance or power as there are other factors at play.
 - v. However, I prefer RX's evidence based on the dyna tune test results that show a reduction in power/performance after TT's work. I accept RX's argument that although he did not talk to MK about his expectation for performance, it is unacceptable for TT to reduce the power and performance, and at best it should have remained the same as prior to the work.
 - vi. I accept EW's assessment that power/performance was reduced directly as a result of the pipe size used and its compression.

Is RX entitled to payment of \$685 for the third party's repair or to a refund of \$741.19?

10. Where goods or services fail to comply with a guarantee set out in the CGA, the consumer is entitled to a remedy against the supplier provided that the consumer has complied with the requirements of the CGA which include that, where a failure can be remedied (unless the failure is of substantial character), the consumer has given the supplier an opportunity to remedy it. If the supplier refuses or neglects to do so or does not succeed in doing so within a reasonable time, the consumer may have the failure remedied elsewhere and obtain damages for the cost of remedying the failure or reject the goods/cancel the contract of services and seek a refund (s18(2)(b) and s32 of the CGA). In addition, the customer is entitled to claim damages for any reasonably foreseeable loss or damage resulting from the failure (s18(4) and s 32(c)).
11. I find RX is entitled to a refund of \$741.19 for the following reasons:
 - i. MK said he was willing to remedy the fault but RX kept asking for a refund. However, RX said on the two occasions before he had the work redone he contacted MK and explained

the loss or performance and the failure of matching the pipework then compressing it. RX said he did ask for a refund and MK refused and did not offer to provide a remedy.

- ii. RX said it was not until he, RX, rang TT head office sometime after having the work redone to complain about MK's work and failure to put it right that MK offered to redo the work.
- iii. RX is entitled to cancel because the failure is a failure of substantial character. A supplier's failure is of a 'substantial character' where the goods or services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure (s21 and s36 of the CGA).
- iv. RX has proved a right to a refund of \$741.19.

Is RX entitled to payment of \$632.50 for the dyna tune?

12. Section 32(c) of the CGA provides that the consumer may obtain from the supplier any loss or damage resulting from the failure which was reasonably foreseeable as liable to result from the failure.
13. RX said he paid for a dyna tune to confirm his view that the car had lost performance and to prove this to MK.
14. The Disputes Tribunal has limited jurisdiction to allow costs including costs of preparing for a hearing and costs of proving the other party's defective works.
15. I allow a portion of the dyna tune cost as a reasonably foreseeable cost because MK refused to properly consider RX's complaint. It is therefore reasonable that RX receives some compensation for the dyna tune.
16. I allow 50%, a sum of \$316.25.

Conclusion:

17. RX has proved entitlement to compensation of \$1057.44.

Referee: J Savage

Date: 13 December 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.